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M.B., Appellant	)	
	)	
and	)	Docket No. 06-1925
	)	Issued: May 18, 2007
GENERAL SERVICES ADMINISTRATION,	)	
Washington, DC, Employer	)	
	)	

### Case Submitted on the Record

Before:  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

On August 15, 2006 appellant, through her representative, filed a timely appeal from a July 21, 2006 merit decision of the Office of Workers' Compensation Programs denying modification of its finding that she had no employment-related disability after May 24, 1998. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issues are: (1) whether the Office properly terminated appellant's compensation effective May 24, 1998 on the grounds that she had no further employment-related disability; (2) whether the Office properly terminated authorization for medical treatment; and (3) whether appellant has established that she had continuing disability due to her employment injury after May 24, 1998.

## **FACTUAL HISTORY**

On July 23, 1993 appellant, then a 54-year-old contract specialist, filed a claim alleging that on July 20, 1993 she experienced severe low back pain after bending over and removing labels from new chairs. The Office accepted her claim for a lumbar sprain and lumbar subluxation. Appellant sustained intermittent total and partial disability from July 23, 1993 to January 1, 1994, when she stopped work.<sup>1</sup> She returned to work for four hours per day three days per week on November 6, 1995. Appellant stopped work on February 26, 1996 and filed a recurrence of disability claim on that date due to her July 20, 1993 employment injury. She subsequently returned to part-time employment.

On June 14, 1996 the Office referred appellant to Dr. Louis Levitt, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated July 9, 1996, Dr. Levitt reviewed the results of a March 1996 magnetic resonance imaging (MRI) scan study and found that it showed degenerative changes at L3-4 and L4-5 without evidence of “frank disc herniation, cord compromise or root impingement.”<sup>2</sup> He determined that appellant could perform full-time sedentary employment without extensive bending or walking and lifting no more than 10 to 15 pounds. Dr. Levitt opined that her pain was “more functional than organic.” He stated, “On the basis of her examination today, there is little evidence of discreet musculoskeletal pathology that resulted from the work trauma of July 20, 1993.” Dr. Levitt opined that appellant had “a chronic pain management problem from back discomfort resulting from the work trauma of July 20, 1993.”

In a report dated April 22, 1996, Dr. Martin W. Wise, a Board-certified orthopedic surgeon and appellant’s attending physician, diagnosed continued lumbar and left leg symptoms. On July 22, 1996 he noted that appellant experienced increased low back pain with radiation down the left leg and numbness into the foot following an evaluation with Dr. Levitt. In a form report dated January 6, 1997, Dr. Wise diagnosed lumbar spondylosis and found that appellant was disabled from employment. In a report dated January 13, 1997, Dr. Constance A. Dale, a chiropractor, diagnosed disc herniations at L3-4, sacroiliac sprain syndrome and sciatic neuritis.

On December 15, 1997 the Office referred appellant to Dr. Robert Collins, a Board-certified orthopedic surgeon, for an impartial medical examination. The Office requested that Dr. Collins address whether appellant sustained disc herniations at L3-4 and L5-S1, sacroiliac strain syndrome and sciatic neuritis. The Office further requested that he discuss whether the accepted employment injuries had resolved and appellant’s work restrictions. In a report dated January 7, 1998, Dr. Collins discussed appellant’s history of injury, reviewed the medical evidence of record and listed findings on physical examination. He found good range of motion with no muscle spasm. Dr. Collins further found no loss of sensation or reflex changes in the

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<sup>1</sup> In a report dated March 8, 1995, Dr. Michael A. Proctor, an orthopedic surgeon and Office referral physician, diagnosed chronic lumbosacral strain, bulging discs at L4-5 and L5-S1 and radiculopathy of the left lower extremity. He found that appellant had continuing work restrictions due to her employment injury. Dr. Proctor opined that she could work four hours per day.

<sup>2</sup> A computerized tomography (CT) scan dated December 20, 1993 revealed findings suspicious for a left disc herniation at L4-5 and a small mild disc herniation at L5-S1. An MRI scan study dated March 1996 showed narrowing and desiccation at L3-4, L4-5 and L5-S1 but no lateral disc herniation.

legs. He determined that she had no “extensor hallucis longus weakness.” Dr. Collins found that MRI scan studies and CT scans did not show a “frank herniated nucleus pulposus with pressure on a nerve.” He opined, “At the present time there is no sign of any herniated disc or any neurological problem at this time. There are no objective findings of any residual impairment.” Dr. Collins asserted that appellant sustained a lumbar strain in 1993 which “was not of any sufficient magnitude to cause any severe structural damage to the back.” He opined that she could resume her regular employment without restriction.

On February 3, 1998 the Office requested that Dr. Collins review appellant’s x-rays and address whether her lumbar subluxation had resolved and whether she had sciatic neuritis or sacroiliac strain. In a supplemental report dated February 23, 1998, Dr. Collins reviewed the x-rays and opined that appellant had “no evidence of sciatic neuritis or sacroiliac strain syndrome or lumbar subluxation.” He opined that she no longer required medical treatment. In a work restriction evaluation dated February 27, 1998, Dr. Collins opined that appellant could work eight hours per day with prophylactic restrictions to prevent a recurrence.

By decision dated March 24, 1998, the Office found that appellant did not establish a recurrence of disability beginning February 26, 1996 due to her accepted employment injury. On March 24, 1998 the Office also notified her that it proposed to terminate her compensation benefits on the grounds that she had no further employment-related disability. By decision dated May 1, 1998, the Office finalized its termination of appellant’s compensation and authorization for medical benefits.

In a report dated May 29, 1998, Dr. Dale described the history of injury provided by appellant and listed findings on examination. He noted that a March 6, 1996 MRI scan study showed narrowing and degenerative changes at L3-4 to L5-S1. On June 15, 1998 Dr. Guillermo E. Sanchez, an orthopedic surgeon, diagnosed chronic lumbosacral strain and lumbar radiculopathy at L4-5 due to appellant’s July 20, 1993 employment injury.

Appellant requested a review of the written record. By decision dated August 19, 1998, an Office hearing representative affirmed the March 24, 1998 decision. The hearing representative noted that Dr. Sanchez did not address why appellant was unable to perform her limited-duty employment after February 1996.

Appellant submitted a form report dated November 6, 1998 from Dr. Dale, who diagnosed myofascitis and chronic sprain. In a report dated December 11, 1998, Dr. Alan J. Delhomme, an osteopath, diagnosed chronic low back pain and left buttock pain with radiation extending into the foot.

Appellant requested an oral hearing on the termination of her compensation, which was held on December 14, 1998. In a decision dated February 9, 1999, an Office hearing representative affirmed the May 1, 1998 termination of compensation. The hearing representative noted that Dr. Dale was not a physician under the Act.

On January 26, 1999 Dr. Delhomme interpreted an electromyogram (EMG) as showing mild, chronic left lumbar radiculopathy. In a form report dated March 3, 1999, he diagnosed lumbar radiculopathy and checked “yes” that the condition was due to the claimed injury. On

April 13, 1999 Dr. Delhomme referred appellant to Dr. Charles M. Narrow, a physiatrist, for pain management.

On April 19, 1999 appellant requested reconsideration of the Office's August 19, 1998 decision finding that she had not established a recurrence of disability.

In a report dated April 26, 1999, Dr. Narrow diagnosed left lumbar radiculitis secondary to L4-5 disc derangement and lumbar facet syndrome.

In a decision dated June 1, 1999, the Office denied merit review as the evidence submitted was immaterial and thus insufficient to warrant review of the prior decision. On August 20, 1999 appellant appealed the June 1, 1999 decision to the Board.

In a report dated August 14, 1999, Dr. Narrow attributed appellant's disc derangement at L4-5, lumbar radiculopathy and lumbar facet syndrome to her July 29, 1993 employment injury and recurrence of February 26, 1996. He stated:

"The following reasons are why [appellant] keeps on having recurrences of her pain after her recurrent flexion injury that caused her L4-5 disc to become symptomatic. Once one tears an annulus, it will, unfortunately, be more likely to be return and the initial factor that caused her disc to cause pain was the original accident that occurred during a move while she was working and repetitively stooping/bending over to remove tags from furniture.... Even though this seems to be a mild injury ... flexing the spine at 60 degrees can pop a disc as interdiscal pressure can increase as much as 300 pounds per square inch."

A discography, performed on September 12, 1999, revealed degenerative disc disease of the spine and an old compression fracture at T12.

On January 3, 2000 appellant requested reconsideration of the termination of her compensation. The Office informed her that it could not consider her request for reconsideration as she had requested an appeal before the Board. On May 18, 2000 the Board dismissed appellant's appeal at her request so that she could pursue reconsideration before the Office.<sup>3</sup> In a decision dated September 6, 2000, the Office denied modification of its termination of appellant's compensation.

In a report dated April 26, 2001, Dr. James C. Murphy, III, a Board-certified orthopedic surgeon, stated:

"In my opinion, as a spine specialist, [appellant's] chronic and recurring exacerbating pain is a natural consequence of her original 1993 flexion injury, which caused her lumbar discs to become symptomatic. The degeneration of [appellant's] injured discs, from 1993 through 1996, along with the added stress of the commute and work, put her at greater risk of reinjury, and in my opinion, caused her February 26, 1996 reinjury.

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<sup>3</sup> Order Dismissing Appeal & Canceling Oral Argument, Docket No. 99-2513 (issued May 18, 2000).

“[Appellant’s] July 1993 L3-4, L4-5 and L5-S1 injuries, as depicted in the December 1993 CT scan, failed to heal properly, were exacerbated by her February 26, 1996 recurring injury, and over time the injured lumbar discs deteriorated, and progressively developed into chronic [d]egenerative [d]isc [d]isease (DDD). The 1999 [d]iscography [d]iagnostic [t]est I performed on [appellant] confirmed my diagnosis of disc leakage at the L3-4, L4-5 and L5-S1 levels (causing continuous nerve inflammation/pain), abnormalities and incompetence. Trauma and/or increased stress also caused the facet joints to deteriorate. The continuous inflammation of the L5-S1 nerve root, as depicted in the December 1993 CT scan, developed into chronic left leg radiculopathy, as evidenced by [1999 EMG findings]. This explains why she has experienced perpetual medical problems and pain, since her original 1993 back injury, and provides clinical/medical proof of the continuation of her injuries through 1999/2000.

“It is my professional opinion, based upon the rationalized, clinical, and scientific/medical proof, that [appellant’s] 1999/2000 lumbar medical condition, as well as her February 26, 1996 reinjury, was ‘[c]ausally [r]elated’ to her July 20, 1993 initial lumbar injury.”

On June 5, 2001 appellant requested reconsideration of the September 6, 2000 decision. By decision dated September 5, 2001, the Office denied modification of its prior decisions.

On November 28, 2001 appellant appealed the September 5, 2001 decision to the Board. In an order dated May 20, 2002, the Board remanded the case for reconstruction of the case record and an appropriate decision to protect appellant’s appeal rights.<sup>4</sup>

In a decision dated February 25, 2003, the Office denied reconsideration of its September 5, 2001 decision on the grounds that the request for reconsideration was untimely and failed to establish clear evidence of error. Appellant appealed to the Board. In an order dated January 27, 2004, the Board remanded the case for the Office to follow its instructions from the prior order and issue an appropriate decision to protect appellant’s appeal rights.<sup>5</sup>

By decision dated June 29, 2004, the Office denied modification of its September 5, 2001 decision. Appellant appealed to the Board. In an order dated July 19, 2005, the Board found that the case record as assembled was incomplete and remanded the case for reconstruction of the case record and a *de novo* decision.<sup>6</sup> By decision dated July 21, 2006, the Office again denied modification of its May 1, 1998 decision.

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<sup>4</sup> Order Remanding Case, Docket No. 02-249 (issued May 20, 2002).

<sup>5</sup> Order Remanding Case, Docket No. 03-1322 (issued January 27, 2004).

<sup>6</sup> Order Remanding Case, Docket No. 05-5 (issued July 19, 2005).

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>7</sup> The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>8</sup>

Section 8123(a) of the Federal Employees' Compensation Act<sup>9</sup> provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>10</sup> The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>11</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>12</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted that appellant sustained lumbar sprain and a lumbar subluxation due to a July 20, 1993 employment injury. Appellant sustained periods of partial and total disability following the injury and filed a notice of recurrence of disability on February 26, 1996. The Office determined that a conflict existed between Dr. Levitt, an Office referral physician, and Dr. Wise, appellant's attending physician, on the conditions resulting from her employment injury and the extent of her employment-related disability. The Office referred appellant to Dr. Collins for an impartial medical examination to resolve the conflict in opinion.

Where there exists a conflict in medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>13</sup> The Board finds that the opinion of Dr. Collins, a Board-certified orthopedic surgeon

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<sup>7</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>8</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>9</sup> 5 U.S.C. §§ 8101-8193.

<sup>10</sup> 5 U.S.C. § 8123(a).

<sup>11</sup> 20 C.F.R. § 10.321.

<sup>12</sup> *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

<sup>13</sup> *Id.*

selected to resolve the conflict in opinion, is well rationalized and based on a proper factual and medical history. Dr. Collins accurately summarized the relevant medical evidence, provided detailed findings on examination and reached conclusions about appellant's condition which comported with his findings.<sup>14</sup> On examination, he listed essentially normal findings and noted that appellant had no muscle spasm or loss of sensation. Dr. Collins reviewed the MRI scan studies and CT scans and opined that appellant sustained a lumbar strain due to her 1993 employment injury. He found "no sign of a herniated disc or any neurological problem...." Dr. Collins concluded that appellant had no residuals from her lumbar strain and could resume her regular employment without restrictions. In a supplemental report dated February 23, 1998, he found that x-rays showed no evidence of a lumbar subluxation, sciatic neuritis or sacroiliac strain syndrome. In a February 27, 1998 work restriction evaluation, Dr. Collins found that she could work eight hours per day with restrictions to prevent a recurrence. He listed limitations that were prophylactic in nature to prevent future injury; however, the possibility of a future injury does not form a basis for the payment of compensation under the Act.<sup>15</sup> As Dr. Collins' report is detailed, well rationalized and based on a proper factual background, his opinion is entitled to the special weight accorded an impartial medical examiner and is sufficient to meet the Office's burden of proof to terminate appellant's compensation benefits.<sup>16</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>17</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

The Office met its burden of proof to terminate authorization for medical benefits through the opinion of Dr. Collins, the impartial medical examiner, who found that appellant had no residuals of her accepted condition. Dr. Collins explained that based on his physical examination and the diagnostic studies appellant had no "objective findings of any residual impairment." He concluded that appellant required no additional medical treatment.

### **LEGAL PRECEDENT -- ISSUE 3**

Following a proper termination of compensation benefits, the burden of proof shifts back to the claimant to support his or her claim of employment-related continuing disability with probative medical evidence.<sup>19</sup> The medical evidence required to establish a causal relationship,

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<sup>14</sup> *Manual Gill*, 52 ECAB 282 (2001).

<sup>15</sup> *Andy J. Paloukos*, 54 ECAB 712 (2003).

<sup>16</sup> *See Manual Gill*, *supra* note 14.

<sup>17</sup> *Pamela K. Guesford*, 53 ECAB 727 (2002).

<sup>18</sup> *Id.*

<sup>19</sup> *John F. Glynn*, 53 ECAB 562 (2002).

generally, is rationalized medical evidence.<sup>20</sup> Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationalize explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>21</sup>

### **ANALYSIS -- ISSUE 3**

To support her claim of continuing disability, appellant submitted reports from Dr. Dale, a chiropractor. Section 8101(2) of the Act provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.<sup>22</sup> Dr. Dale did not diagnose a subluxation by x-ray and thus his reports do not constitute competent medical evidence.<sup>23</sup>

In a report dated December 11, 1998, Dr. Delhomme diagnosed chronic low back pain with left-sided radiculopathy. He did not, however, address causation and thus his report is of diminished probative value on the issue of causal relationship.<sup>24</sup> In a form report dated March 3, 1999, Dr. Delhomme diagnosed lumbar radiculopathy and checked "yes" that her condition resulted from the employment injury. The Board has held, however, that, when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.<sup>25</sup>

On April 26, 1999 Dr. Narrow diagnosed left lumbar radiculitis due to L4-5 disc derangement and lumbar facet syndrome. In a report dated August 14, 1999, he opined that appellant's L4-5 disc derangement, lumbar radiculopathy and lumbar facet syndrome resulted from her July 1993 employment injury and February 26, 1996 recurrence of disability. Dr. Narrow asserted that appellant's July 1993 employment injury, while seemingly minor, caused her disc to become symptomatic. He described the mechanism by which the injury may have occurred. The Office did not accept appellant's claim for L4-5 disc derangement, lumbar radiculopathy and lumbar facet syndrome. The Office accepted the claim for lumbar sprain and lumbar subluxation. Appellant bears the burden of proof to establish causal relationship for any condition not accepted by the Office through the submission of rationalized medical evidence.<sup>26</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>22</sup> 5 U.S.C. § 8101(2); *see also Robert S. Winchester*, 54 ECAB 191 (2002).

<sup>23</sup> *See Michelle Salazar*, 54 ECAB 523 (2003).

<sup>24</sup> *Conrad Hightower*, 54 ECAB 796 (2003).

<sup>25</sup> *Deborah L. Beatty*, 54 ECAB 3234 (2003).

<sup>26</sup> *Brady L. Fowler*, 44 ECAB 343 (1992).



Dr. Narrow attributed appellant's disc injury to her July 1993 employment injury and generally described how the injury could have occurred. The impartial medical examiner, however, specifically addressed the issue of whether appellant sustained a disc injury due to the July 1993 employment injury. Dr. Collins found that she sustained a lumbar sprain due to her employment injury and that x-rays revealed no further lumbar subluxation. Dr. Narrow's report is insufficient to overcome the special weight accorded Dr. Collins as the impartial medical examiner.

In a report dated April 26, 2001, Dr. Murphy attributed appellant's lumbar disc pain to her 1993 flexion injury. He asserted that appellant sustained disc injuries at L3-4, L4-5 and L5-S1 due to her 1993 employment injury as demonstrated by the December 1993 CT scan. Dr. Murphy found that her injuries at L3-4, L4-5 and L5-S1 did not adequately heal and developed into degenerative disc disease. He opined that appellant had "continuous inflammation of the L5-S1 nerve root" and resulting left leg radiculopathy as evidenced by diagnostic tests. Dr. Murphy noted that a discography performed in 1999 revealed leaking discs at L3-4, L4-5 and L5-S1 causing pain and inflammation. He attributed appellant's continuing pain to her lumbar condition which resulted from her July 20, 1993 injury and reinjury on February 26, 1996. Dr. Collins, however, in his capacity as impartial medical examiner reviewed both the December 1993 CT scan and March 1996 MRI scan study and determined that appellant did not sustain a disc injury due to her July 1993 employment injury. He provided rationale for his opinion by explaining that the injury was minor and insufficient to "cause any severe structural damage to the back." Dr. Murphy's opinion is of insufficient probative value to overcome the weight accorded Dr. Collins as impartial medical examiner. The Board finds that appellant did not meet her burden of proof to establish that she had any continuing employment-related disability after May 24, 1998.

### **CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation and authorization for medical treatment effective May 24, 1998 on the grounds that she had no further employment-related disability and condition. The Board further finds that appellant has not established that she had continuing disability due to her employment injury after May 24, 1998.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 21, 2006 is affirmed.

Issued: May 18, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board